

REMARKS

This Document is in response to the Office Action of December 29, 2005 wherein the Examiner rejected claims 1-10, all claims pending.

The Examiner first rejected claims 1-2 under 35 USC 102(a) as being anticipated by *Kukucka et al.* The Examiner next rejected claims 3-10 under 35 USC 103(a) as being unpatentable over *Kukucka et al.* The filing date of *Kukucka et al.* is December 27, 2001.

Applicant attaches hereto a Second Declaration of Paul Robert Heide under 37 CFR 1.131 which discloses a conception and reduction to practice date of at least March 13, 2001, before the filing date of *Kukucka et al.* Since *Kukucka et al.* is not prior art, Applicant requests withdrawal of these rejections.

The second Declaration provides evidence of conception, being the email of May 26, 2000 (Exhibit D), and documentary evidence of the actual design of the prototype, being the email communication of December 15, 2000 referring to the Specification E0654, and Rev. C of the Component Specification E0654 HUV, followed by evidence of the actual reduction to practice evidenced by Exhibits A, B and C, being the construction of the prototype.

Because the conception *and* the actual reduction to practice both occurred before the effective date of *Kukucka et al.*, the filing date December 27, 2001, diligence is not relevant, and need not be shown:

"Under 37 CFR 1.131, the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends

with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application). Note, therefore, that only diligence before reduction to practice is a material consideration. The "lapse of time between the completion or reduction to practice of an invention and the filing of an application thereon" is not relevant to an affidavit or declaration under 37 CFR 1.131. See *Ex parte Merz*, 75 USPQ 296 (Bd. App. 1947). MPEP 715.07(a).

Applicant submits that this Declaration and supporting Exhibits is sufficient to overcome the rejections.

No new issues are presented.

Applicant submits that all claims are in condition for allowance and request issuance of the application.

Respectfully submitted,

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